



JOHANNESSEN & ASSOCIATES, P.S.  
ENVIRONMENTAL, LAND USE & REGULATORY LAW

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February 27, 2008

Dan Cargill  
Washington State Department of Ecology  
3190 160th Avenue S.E.  
Bellevue, WA 98008

Charles Ordine, Mailstop ORC-185  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Dear Mr. Cargill and Mr. Ordine:

I am writing to memorialize a conversation I had with Mr. Cargill and reconfirm our firm's representation of Boyer Towing, Inc. and Boyer Halvorsen, Kirsten Halvorsen Stahl and Maia Halvorsen.<sup>1</sup> We recently discovered that, since our representation of Boyer Towing began, two reports have been produced for the Washington Department of Ecology ("Ecology") in connection with Early Action Area 2 ("EAA-2"). Those reports are entitled *Summary of Existing Information and Identification of Data Gaps* (February 2007) and *Source Control Action Plan* (June 2007). In these reports, Boyer Towing's properties are discussed, yet neither Boyer Towing nor this firm were given notice that such reports would be issued or an opportunity to comment on drafts of those reports.

We would greatly appreciate having an opportunity to review and comment on future reports or documents prepared by either Ecology or the U.S. Environmental Protection Agency ("EPA"), to the extent those reports discuss Boyer Towing's properties, before they are finalized. We also request that our firm be placed on your mailing list for future notices relating to the Lower Duwamish Waterway and, specifically, EAA-2.

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<sup>1</sup> Our firm does not represent Mary Catherine Halvorsen.



I understand that the process has been moving slowly and that Ecology may not yet have had an opportunity to review Boyer Towing's responses to EPA's 104(e) request. However, our client is concerned with a few discrepancies between statements made in the reports and information Boyer Towing provided in its 104(e) responses. Specifically, Boyer Towing is concerned about certain mischaracterizations of Parcel 15 found in Section 3.3.4 of the Data Gaps Report (pp. 32-33) and Section 3.4.1 of the Source Control Action Plan (pp. 21-22). We are writing to clarify and correct the following:

- "Boyer [Alaska Barge Lines] owns six tugboats and one lumber barge." This statement is incorrect; Boyer Alaska Barge Line, Inc. is now Boyer Logistics, Inc., a wholly-owned subsidiary of Boyer Towing. An active general freight terminal and container storage facility is located on Parcels 15 and 16. Paragraph 2 of Section 3.3.1 of the Data Gaps Report gives an accurate description of Boyer Towing's marine equipment.
- Boyer Towing objects to language implying that there are multiple tanks on the site. Boyer Towing has one 1,200 gallon aboveground Appendix 2F Fire Protected diesel fuel tank used for fueling larger forklifts and one small propane tank for fueling smaller forklifts.
- Boyer Towing does not have rail on any of its properties.
- Boyer Towing objects to the characterization of implementing a spill prevention plan as "extensive corrective actions."
- Boyer Towing properly disposes of all waste products, and provided documentation of its waste disposal practices in response to EPA's 104(e) request.
- Boyer Towing would like to clarify that none of the materials identified by the inspector as posing an erosion, leaching or spill risk have actually eroded, leached or spilled.
- Boyer Towing objects to the description of certain materials or wastes as being "stored for a long time without management." For example, degreasers are stored in the forklift shop. Dirt is not stored on the site and exists only beneath the asphalt that covers the entire property. Petroleum products are stored in the forklift shop, warehouse, and in waste oil tanks pending pick-up for recycling. Battery acid is stored only inside the batteries used in the forklifts and equipment in the terminal.
- Boyer Towing objects to the sentence "a spill from a leaking hydraulic jack was also observed." This "spill" was no more than a slow leak from a hydraulic lift that carries less than one quart of oil and is only used in the forklift shop.
- Boyer Towing objects to the description of part of the property as a "bone yard area."

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- Boyer Towing has never operated, and has never had a tenant who operated, a commercial fishing terminal or a machine shop at any of its South Park properties.
- All, not some, of the properties, with the exception of Parcels 15 and 16, are rental properties.
- Although Boyer Towing purchased properties at which B&J Auto Wrecking and Alaska Washington Company (also known as Alki Construction Company) had at one time operated, neither of these entities has ever been a tenant of Boyer Towing.

Although I understand that Ecology does not foresee issuing more reports in the near future, I do appreciate your willingness to include us on EAA-2 updates and notify us of other documents as they become available for public comment.

If you have any questions or concerns, please do not hesitate to contact me at (206) 632-2000 or via e-mail at [amk@johanassoc.com](mailto:amk@johanassoc.com).

Sincerely,



Athena M. Kennedy

/amk

cc: Boyer Towing, Inc.